

**ARKANSAS COURT OF APPEALS**DIVISION III  
No. CACR 08-1024NICHOLAS ANDRE MUNN  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE**Opinion Delivered** MARCH 18, 2009APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
[NO. CR 2001-926 & CR 2008-95]HONORABLE DAVID BURNETT,  
JUDGE

AFFIRMED AS MODIFIED

**WAYMOND M. BROWN, Judge**

On April 1, 2008, Nicholas Andre Munn pleaded guilty to violating the terms and conditions of a previous suspended sentence and was sentenced to ten years' imprisonment. That same day, he also pleaded guilty to separate charges and received ten years' suspended imposition of sentence. The judgment and commitment order reflected that the term of imprisonment and the suspended imposition of sentence were to be served consecutively. Munn filed a motion to correct the judgment and commitment order to reflect concurrent sentences, but the trial court denied the motion. Munn appeals to this court, arguing that the trial court should have granted his motion. The State concedes error and urges this court to reverse. We agree. Accordingly, we modify the judgment and commitment order to reflect concurrent sentences.

On June 11, 2003, Munn pleaded guilty to the charge of battery in the first degree

in case CR-2001-926, for which he was sentenced to five years' imprisonment followed by five years' suspended imposition of sentence. Munn was paroled on December 2, 2004, and his suspended imposition of sentence began on that date. The State petitioned the court to revoke the suspended imposition of sentence on January 29, 2008, alleging among other things that he committed the new crimes of battery in the first degree and terroristic act. The new crimes were part of case CR-2008-95. Munn negotiated guilty pleas for both the revocation and the new charges. In case CR-2001-926, Munn received ten years' imprisonment. In case CR-2008-95, he received ten years' suspended imposition of sentence. The judgment and commitment order in CR-2008-95 reflected that the sentences in the two cases would be served consecutively. Munn filed a motion to correct the judgment and commitment order, alleging that consecutive sentences were contrary to the law and asking that the sentences be run concurrently. The court denied the motion after hearing arguments from counsel. Munn filed a timely appeal to this court.

As he did below, Munn argues that his suspended imposition of sentence should be served concurrently with his term in the Arkansas Department of Correction. Sentencing is entirely a matter of statute in Arkansas. *E.g.*, *State v. Hardiman*, 353 Ark. 125, 114 S.W.3d 164 (2003); *Ward v. State*, 97 Ark. App. 294, 248 S.W.3d 489 (2007). Questions regarding the interpretation of a sentencing statute are reviewed de novo by this court. *Ward, supra*. In this case, the relevant statute is Ark. Code Ann. § 5-4-307 (Repl. 2008):

(a) Except as provided in subsection (c) of this section, a period of suspension or probation commences to run on the day it is imposed.

(b)(1) Whether imposed at the same or a different time, multiple periods of suspension

or probation run concurrently.

(2) The period of a suspension or probation also runs concurrently with any federal or state term of imprisonment or parole to which a defendant is or becomes subject to during the period of the suspension or probation.

(c) If a court sentences a defendant to a term of imprisonment and suspends imposition of sentence as to an additional term of imprisonment, the period of the suspension commences to run on the day the defendant is lawfully set at liberty from the imprisonment.

Subsection (c) only applies when a term of imprisonment is accompanied by the suspended imposition of another term. *See Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). The instant case does not fall under subsection (c), as Munn's sentences, though entered on the same day, did not accompany each other. Therefore, subsections (a) and (b) apply, and the suspended imposition of sentence in CR-2008-95 should have begun on the day imposed, not the day that he completes his term of imprisonment in CR-2001-926.

Where the law does not authorize the particular sentence pronounced by the trial court, the sentence is unauthorized and illegal, and we can either reverse and remand or correct the sentence without reversing and remanding. *See State v. Fountain*, 350 Ark. 437, 88 S.W.3d 411 (2002). In this case, the circuit court was not authorized to run the suspended imposition of sentence consecutive to his term of imprisonment. Therefore, we modify the judgment and commitment order in CR-2008-95 to reflect concurrent sentences and affirm the sentence as modified.

Affirmed as modified.

VAUGHT, C.J., and HART, J., agree.